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MAY 9 1946
CHARLES ELMORE CROPLEY

No. 1104

IN THE

Supreme Court of the United States

OCTOBER TERM, 1945

A. M. ANDERSON, Receiver of National Bank of Kentucky, Louisville, Kentucky,

Petitioner,

v.

IRVIN YUNGKAU, Executor of the Estate of Albert Yungkau, Deceased; H. E. FRANZ, Executor of the Estate of William R. Gilpin, Deceased; LUCY LOGAN MASSIE, Executrix of the Estate of William K. Massie, Deceased; BEN WILLIAMSON, JR. and DAVIS GEIGER, Co-Executors of the Estate of Ben Williamson, Deceased; WATT M. PRICHARD and CHARLES V. KITCHEN, Co-Executors of the Estate of James H. Kitchen, Deceased; CATHERINE C. KITCHEN, Executrix of the Estate of John W. Kitchen, Deceased; HENRY G. SANDIFER, Executor of the Estate of Alexander B. Massey, Deceased,

Respondents.

REPLY BRIEF FOR PETITIONER

ROBERT S. MARX,
FRANK E. WOOD,
HARRY KASFIR,
Attorneys for Petitioner.

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CINCINNATI, OHIO

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REPLY BRIEF FOR PETITIONER

The briefs for respondents refer to the second preliminary draft of recommendations by this Court's Advisory Committee on rules for civil procedure. Respondent Ben Williamson, executor, on page four of his brief quotes a sentence from that preliminary draft to the effect that,

"as to Rule 25 . . . the limit there fixed should be absolute."

The same quotation recognizes that as now drawn "finality is not involved" in Rule 25.

It is unfortunate that neither petitioner nor respondents have available the final report of the Advisory Committee. The Committee met on March 25, 1946 and counsel for petitioner is informed that it arrived at a final conclusion as to amendments to the rules which will be submitted to this Court. Counsel for petitioner is further informed that one of those recommendations will be for a clarification of the rules to permit revivor beyond the two-year period in a proper case on a showing of excusable neglect. The promulgation of such an amendment would in the future produce with clarity and certainty, the effect for which petitioner contended in the lower court. If adopted the result would be that every litigant will be able to obtain the relief which the Circuit Court of Appeals denied the Receiver in this case. Although the proposed amendment clarifies the rule, the present rule should receive a liberal construction and so construed we submit that the rule permits substitution of the parties in the present case.

CONCLUSION

We therefore urge that the petition should be granted so that the Court may construe the rule in the present case and for future guidance in connection with the Advisory Committee's final recommendation.

Respectfully submitted,

ROBERT S. MARX,
FRANK E. WOOD,
HARRY KASPIR,
Attorneys for Petitioner.

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CHARLES ELMORE CROPLEY
CLERK

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1945

No. [redacted] 87.

A. M. ANDERSON, RECEIVER OF NATIONAL BANK OF KENTUCKY,

Petitioner,

vs.

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Respondents

REPLY BRIEF FOR PETITIONER

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Although the proposed amendment clarifies the rule the present rule should receive a liberal consideration, and so construed, we submit, the rule permits substitution of the parties in the present case.

Conclusion

We therefore urge that the petition should be granted so that the court may construe the rule in the present case and for future guidance in connection with the Advisory Committee's final recommendations.

Respectfully submitted,

ROBERT S. MARX,
FRANK E. WOOD,
HARRY KASFIR,
Attorneys for Petitioner.